BEFORE THE HEARING PANEL OF THE
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE
JAMES N. TURNER S. Ct. Case No.: 07-774
_____/

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE HEARING PANEL, FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

Pursuant to the Florida Constitution, article V, § 12 (a)(1), (b) and (c), and the FJQC Rules, the Hearing Panel, Florida Judicial Qualifications Commission ("JQC") submits these Findings, Conclusions and Recommendations to the Florida Supreme Court.

The course of proceedings

On July 8, 2009, the Investigative Panel of the JQC filed a notice of formal charges against the Honorable James N. Turner, Circuit Judge, for the Ninth Judicial Circuit (Orange and Osceola Counties). The notice was amended on December 3, 2009, May 14, 2010, and June 14, 2010, to include additional charges. The matter proceeded on a "Notice of Third Amended Consolidated Charges" which contained 13 paragraphs.

The charges against Judge Turner fell into several categories: (1) engaging in partisan political activity in the course of a 2008 election campaign for the office

of circuit judge (Paragraphs 1, 2, 3, 4 & 6); (2) personally soliciting campaign contributions (Paragraph 5); (3) accepting a campaign contribution in excess of statutory limits to influence the results of the election (Paragraphs 7); (4) representing a family member as a lawyer while holding judicial office (Paragraphs 8 & 9); and (5) misconduct in office by inappropriate, intemperate and irrational behavior (paragraph 10, 11 & 12). Paragraph 13 charged a "pattern of misconduct" based on the other 12 charges.

Judge Turner answered, admitting the allegations in Paragraphs 8 & 9, denying the allegations in Paragraphs 1-7, 13 and giving his explanation for Paragraphs 10, 11 & 12. Judge Turner raised the First Amendment as an affirmative defense to all counts involving his election campaign. Thereafter, he sought a partial summary judgment on Counts 1, 3, 4 & 5 based on this First Amendment defense. By order dated February 26, 2010, this motion was carried with the case and submitted to the Hearing Panel at the final hearing. The parties submitted trial memoranda on all issues, including the First Amendment defense.

John Cardillo, Esq. chaired the Hearing Panel, which conducted a final hearing on October 25 through October 28, 2010. Six commissioners were present during the hearing and deliberations. In addition to Chairman Cardillo, these included Judge Preston Silvernail, Ricardo Morales, III (lay member), Henry M.

Coxe, III, Esq., Judge Thomas Freeman and Dr. Steven R. Maxwell (lay member).

Special Counsel Marvin Barkin and Michael K. Green represented the Investigative Panel. Judge Turner was represented by Barry Rigby, Esq. Attorney Lauri Waldman Ross served as counsel to the Hearing Panel.

The pleadings are already on file with the Florida Supreme Court.[1] A transcript of the final hearing, and all trial exhibits (identified by party and number) are being filed simultaneously with these "Findings of Fact, Conclusions and Recommendations." Some of the exhibits were requested by the Hearing Panel, were produced voluntarily, and are marked as Hearing Panel Exhibits.

The Hearing Panel summarizes (1) the charges and their disposition; (2) findings of fact; (3) conclusions of law; and (4) recommended discipline.

The Charges and Their Disposition

The charges alleged in the "Notice of Third Amended Consolidated Charges" and their disposition are as follows:

1. During the campaign, you knowingly participated in partisan political activity by purposefully campaigning as a member of a partisan political party, including identifying yourself to voters as a member of a partisan political party at the Fila Mitchell Library in Orlando, Florida on or about November 1, 2008, in

[1]JQC Exhibit 104 was withdrawn. All of the remaining exhibits were admitted in evidence by agreement.

violation of Fla. Stat. §§ 105.071(1), 105.071(2), 105.071(3) and Canons, 7A(3)(a) and 7A(3)(b) of the Code of Judicial Conduct.

Disposition: Voluntarily Dismissed at Trial. (T. 6-7)

2. During the campaign, you knowingly participated in partisan political activity by your own actions and by permitting your campaign workers to simultaneously promote and campaign for your election and the election of other political candidates as if you were running together on a partisan ticket, including doing so in Orlando, Florida on or about October 20, 2008 during early voting and on November 1, 2008 (election day) in violation of Fla. Stat. §§ 105.071(1), 105.071(2), 105.071(4) and Canons 7A(1)(b), 7A(3)(a), 7A(3)(b) and 7A(3)(c).

Disposition: Not guilty.

3. During the campaign, you knowingly participated in partisan political activity by publicly voicing support for a partisan political candidate for the Sheriff of Orange County, Florida at an AFL-CIO candidate forum you attended in Orange County, Florida on or about May 14, 2008, in violation of Fla. Stat. §§ 105.071(1), 105.071(4) and Canons 7A(1)(b), 7A(3)(a) and 7A(3)(b) of the Code of Judicial Conduct.

Disposition: Voluntarily Dismissed at Trial. (T. 6-7).

4. During the campaign, you knowingly engaged in partisan political

activity by campaigning on behalf of other partisan political candidates by promoting, on September 19, 2008, the attendance of others at a partisan political event, specifically an Obama/Biden fundraiser at which the sister of Democratic Vice Presidential Candidate Joseph Biden was scheduled to appear on September 20, 2008, in violation of Fla. Stat. §§ 105.071(1), 105.071(4) and Canons 7A(1)(b), 7A(1)(e), 7A(3)(a) and 7A(3)(b) of the Code of Judicial Conduct. A true and correct copy of an e-mail from you to various "friends" dated September 19, 2008 promoting and encouraging their attendance at the foregoing partisan political event is attached as Exhibit A to the prior Notice of Amended Formal Charges and is incorporated by reference herein.

Disposition: Not Guilty.

5. During the campaign, you knowingly personally solicited contributions for your campaign, including doing so in writing on or about August 27, 2008, in violation of Canons 7A(3)(a), 7A(3)(b) and 7C(1) of the Code of Judicial Conduct. A true and correct copy of correspondence from you to "friends, voters and colleagues" dated August 27, 2008 personally soliciting monetary contributions to your campaign is attached as Exhibit B to the prior Notice of Amended Formal Charges and is incorporated by reference herein.

Disposition: Guilty, as charged.

6. During the campaign, you knowingly participated in partisan political activity by purposefully attending partisan political functions where you knew you would be identified as a candidate for judge closely associated with a partisan political party, conduct you knew appeared to suggest your support of that party and its candidates, including attending the Orange County Jefferson Jackson Gala on or about September 14, 2008, a partisan political party fundraiser to which your opponent was not invited, and by attending a partisan political celebration in Orange County, Florida immediately following the primary election which celebrated the nomination of Barack Obama as the Democratic Party's candidate for President of the United States, to which your opponent was not invited, in violation of Fla. Stat. §§ 105.071(1), 105.071(2), 105.071(2), 105.071(3) and Canon 7A(3)(a), 7A(3)(b) and 7C(3) of the Code of Judicial Conduct.

Disposition: Not Guilty.

7. During the campaign for the office you now hold, you knowingly accepted and received a very substantial campaign contribution made for the purpose of influencing the results of the election, whether characterized as a gift or loan, far in excess of the $500 limit established by Ch. 106, Florida Statutes, from your mother (Mignon Gordon) which you used to pay for your campaign, in violation of Chapter 106, Florida Statutes, and Canons 1, 2A and 7C(1) of the

Code of Judicial Conduct.

Disposition: Guilty of violating Chapter 106 and Canon 7C(1); Canons 1 & 2A do not apply

8. As a sitting circuit court judge, on or about November 20, 2009, you knowingly filed a notice of appearance in pending litigation in Dade County, Florida (CitiMortgage, Inc. v. Gordon, Case No. 2009-74992-CA-01) where you purported to appear to represent your mother in foreclosure proceedings brought against her therein, in violation of Canons 1, 2A and 5G of the Code of Judicial Conduct.

Disposition: Guilty, as charged.

9. As a sitting circuit court judge, you knowingly represented and acted as litigation counsel for your mother in the foreclosure proceeding in Dade County, Florida described above by, inter alia, communicating with counsel for the mortgagee on her behalf, in Osceola County, Florida, in violation of Canon 1, 2A and 5G of the Code of Judicial Conduct.

Disposition: Guilty, as charged.

10. While performing the duties of the office you now hold, you made inappropriate comments and had improper, unwanted and uninvited physical contact with subordinate female personnel, including hugging, kissing and massaging them, attempting to force yourself into the personal and private lives of

subordinate female employees, including, loaning them money, inviting yourself to their homes and family activities and/or appearing without invitation at their homes and family activities and injecting yourself into their families' lives without being invited or asked to do so, insisting on communicating with and seeing certain subordinate female court employees for reasons unrelated to the performance of your or their official duties, and intemperately and vexatious screaming and yelling at, berating, belittling and humiliating certain subordinate female employees, including your judicial assistants and court clerks in open court and otherwise, thus creating a hostile work environment in violation of Fla. Stat. § 760.10 and Canons 1 and 2A of the Code of Judicial Conduct.

<u>Disposition</u>: Guilty of Injecting Himself into the Personal and Family Life of Heather Shelby and judicial canon violations, only; not guilty as to the remainder of Paragraph 10, and alleged violation of § 760.10, Fla. Stat.

11. While performing the duties of the office you now hold, you have engaged in a pattern of erratic and inappropriate behavior, including without limitation, publicly proclaiming that you are the protector of women in Osceola County, purposefully delaying release of completed orders, including time sensitive orders, taking and making phone calls on your personal cellular phone while on the bench with proceedings ongoing before you, turning your back on those before you while court proceedings were ongoing before you, putting your

feet up on the bench in the face of those appearing before you while court proceedings were ongoing, screaming and yelling from the bench at litigants, attorneys and court personnel, publicly and inappropriately displaying your pistol and holster to court personnel and members of the public, and using a computer while on the bench with proceedings ongoing before you to surf the internet, review and compose personal e-mails and view inter alia, Google and Facebook, all in violation of Canons 1, 2A and 3A(3), 3A(4) and 3A(8) of the Code of Judicial Conduct.

Disposition: Not Guilty.

12. While acting as a sitting circuit court judge in open court in State v. John Doe, a Child, Osceola County Case No. 2009 CJ 000327, on or about March 12, 2010, you unlawfully ordered the seizure of jewelry from a child, arbitrarily determined its value and proposed to offset the court costs owed by the child against your summary determination of the value of the jewelry, in violation of Canons 1, 2A and 3A(3) of the Code of Judicial Conduct.

Disposition: Guilty of an error in judgment and a technical violation of the canons, for which no punishment is recommended.

13. That all of the foregoing, taken collectively, constitutes a pattern of misconduct which raises serious questions regarding your fitness to perform the duties of the office you now hold.

Disposition: Guilty as to a pattern with respect to paragraphs 5, 7, 8, 9, and, in part, paragraph 10 (as to Heather Shelby, only).

FINDINGS OF FACT

A. Background

James N. Turner was born in 1946, and is currently 64 years old. (T. 1103; Resp. Ex 1). After honorable discharge from the Army (in 1970), he obtained a B. S. Degree in accounting (1972), a law degree (1975) and an LLM in taxation (1978) (T. 654; 657; 1086; JQC Ex. 35).

Turner was admitted to the Florida Bar in 1975. He began his career as a tax lawyer. After one year, he changed firms and switched to insurance defense, in Miami. (T. 1087). In 1981, Turner moved upstate, ultimately opening his own firm as a sole practitioner in Orlando. (T. 1087-88). From 1991 through 2008, he practiced employment law, mostly in the area of discrimination representing employees. He is a board certified civil trial lawyer, business litigation lawyer, and board certified mediator. (T. 651; 661; 674-75; 1088). Turner is an expert in employment law. (T. 677).

In 2008, James Turner ran for a circuit judgeship in the Ninth Circuit. There were three candidates in the race, which on August 26, 2008, ended in a runoff with Turner ahead of his nearest competitor by only 700 votes (T. 554-56).

B. Personal Solicitation

On August 27, 2008, the very next day, Turner's campaign consultant drafted a letter for his signature directed to "friends, colleagues and voters." (JQC Ex. 48). This letter solicited others to make their "most generous contribution to my campaign," adding that "your personal or corporate donation of $50, $100, $250 or $500 would be deeply appreciated." (JQC Ex. 48). Turner knew that the judicial canons precluded direct solicitation and fundraising by a judicial candidate. (T. 569-70). He modified his consultant's draft and sent the following e-mail message to all Florida Bar members in Orange and Osceola County (including his opponent). (T. 570-71):

> Dear friends, colleagues and voters:
>
> Thank you very much for your support and your votes.
>
> As you may know, I was honored to win a plurality of the votes cast in both Orange and Osceola Counties in yesterday's judicial election. However, since I did not receive the required majority of the vote, I must go to a runoff election on November 4, 2008. I am proud to say that I am a Vietnam Era Veteran and have 32 years of experience as a lawyer. I invite you to visit my website for more information at www.JimTurnerforJudge.com. This election is critical to our community as our judiciary faces an ever increasing number of cases combined with a shrinking budget and I believe that we need jurists who can apply their background and experience in a fair, decisive and objective manner. If you believe that we need the most experienced candidate as our next Circuit Court Judge, and, if you believe that a long history of service to our nation and our community is important, then I need you to help me realize these valued beliefs. **If you would**

> **consider making a contribution to my campaign to help me communicate our message to the voters of this judicial circuit, please let me know** and I will have someone from my Campaign Finance Committee contact you. And, please do not forget to vote in the upcoming November 4th General Election. **For more information or to speak to me personally**, please call me at (407) 234-3535. Thank you again.
>
> Sincerely yours,
>
> Jim Turner (JQC Ex. 9, emphasis added).

Judge Turner knew that his e-mail constituted a direct solicitation of campaign funds, and "could be so construed," but indicated that his intent was only to refer people to his campaign committee. (JQC Ex. 37, p. 47; T. 571). This intent is contradicted by the unambiguous language of his email, which urged recipients to contact him directly. (JQC Ex. 9).

C. <u>The $30,000 Campaign Contribution</u>

James Turner acted as the treasurer of his own campaign. (T. 657). Towards the end of the campaign, Turner had exhausted his financial resources. (T. 1181). His income had dropped off dramatically, he had already cashed in and spent his existing retirement account on his campaign, he wasn't receiving the campaign contributions he had anticipated, and his campaign accumulated debt. (T. 1103-04, 1181; 1240-41). Judge Turner won the election on November 4, 2010. He solicited campaign funds from his mother, who refinanced her

condominium in South Florida, and (on November 5, 2008) wire- transferred $42,288.75 into his personal account. (T. 535; 541).

On November 5 & 7, 2008, Judge Turner transferred $30,000 from his personal account into his campaign account (T. 536; JQC. Ex. 39, bates number Rooo127). Judge Turner reported to the Department of Elections a "loan" from his mother to himself, personally, and loans from himself to his campaign. (Hearing Panel Ex. 3). Judge Turner testified that he had an accountant at the time, and thought the transactions were properly characterized. The "loans" were undocumented, and he didn't know if he was going to pay his mother back. Turner agreed this was "pretty indefinite" by any legal standards. The "bottom line" was that his campaign was in debt, his mother refinanced her condo, and he took $30,000 from his mother and put it into his campaign. (T. 538-39). The $30,000 that Judge Turner's campaign received from his mother was in excess of the $500 limits on campaign contributions, was deposited after the drop-dead date for contributions, was used to pay off previously incurred campaign debt, and to influence the outcome of the election. (T. 543-44; JQC Ex. 39).

Judge Turner drafted his own "Full and Public Disclosure of Financial Interests" (Form 6) for the years 2009 and 2010. (T. 1177). Judge Turner did not report the funds received either as a loan or as a liability on these Financial

Disclosure Forms. (Hearing Panel Exs. 1 & 2; T. 612; 614-16; 639-39). He did not amend these Forms even after he was placed on notice of a JQC investigation. (T. 1170-71). He reported "None" to questions about gifts on his gift disclosure form in June 2009. (Hearing Panel Ex. 2). He did not report the funds on any tax return. (T. 659).

D. Practicing Law while a Judge.

Judge Turner's mother (Mignon Gordon) refinanced her South Florida condo and gave him $42,000 out of the $200,000 she borrowed. (T. 541). Ms. Gordon was unable to repay the loan and faced foreclosure (JQC Ex. 56). In September 2009, Judge Turner began negotiating with his mother's mortgage company (JQC Ex. 57-59). On September 22, 2009, he wrote mortgage broker, Mark Steiner:

> Dear Mr. Steiner:
>
> **I am a lawyer from Orlando and my mother is facing foreclosure on a CitiMortgage mortgage.** My mother is trying to do a reverse mortgage and has been approved for a Federally-Insured Reverse Mortgage. However, the appraisal came in low and we are seeking to have a short payoff of $150,000.00. I have tried calling your office to discuss this matter with you personally but was not able to get through.
>
> If you and your client are in agreement, we can close this before November 30, 2009.
>
> **For your information, my mother had a flawless payment record**

but was completely wiped out by Bernard Madoff.

Thank you very much.

N. James Turner (emphasis added)

Attorneys for the mortgage company requested a signed authorization from Ms. Gordon to discuss the situation with her son. (JQC Ex. 57, 58). On September 22, 2009, Judge Turner requested his mother to send such authorization. (JQC Ex. 59). On October 9, 2009, CitiMortgage, Inc. filed a mortgage foreclosure action against Ms. Gordon. CitiMortgage, Inc. v. Mignon Gordon, 11th Judicial Circuit Case No. 2009-74992-CA-01 (JQC Ex. 54).

On November 20, 2009, James N. Turner filed a notice of appearance "as counsel for the Defendant Mignon Gordon" in the mortgage foreclosure case, and provided it to the lender (JQC Exs. 59 & 60).

On December 1, 2009, Turner wrote lender's counsel indicating:

> I am an attorney licensed to practice in Florida but I do not practice. My mother is Mignon Gordon and I filed a Notice of Appearance in the above matter on her behalf solely to avoid a default. I understood we were negotiating with your client toward a short payoff so that my mother could obtain a reverse mortgage.

Judge Turner authorized the lender's counsel to deal directly with his mother. (JQC Ex. 61).

On December 7, 2009, lender's counsel notified Jim Turner that the investor

would not permit a short payoff, but could do a short sale or DIL (deed in lieu of foreclosure), asking how Turner would like to proceed. (JQC Ex. 62). Turner responded, "[P]roceed with the foreclosure action. **We will defend accordingly."** (JQC Ex. 62, emphasis added).

Judge Turner's mother lived on fixed income investments with Bernard Madoff and lost these investments in a Ponzi scheme. This left her living on social security, unable to repay her mortgage. (T. 539-41, 1102). Judge Turner claimed they learned about the Madoff scam in late November. (T. 541). He asserted that he was acting as a dutiful son, and entered the notice of appearance "in a panic" under the mistaken belief that the canons permitted a judge to represent an immediate family member, only to determine later that they did not. (T. 547; 653; 167).

The written documents and follow-up questioning negate his explanation. Judge Turner informed Mr. Steiner on September 22, 2009 (two months prior to November) that his mother was "wiped out" by Bernie Madoff. (JQC Ex. 56). He corresponded with counsel for his mother's lender from September through November, advising all that he was a non-practicing attorney. Judge Turner thought about this issue in advance and carefully crafted language to disguise the fact he was a circuit judge, indicating that they didn't need to know. (T. 550-52).

The Hearing Panel agrees that disclosure of Judge Turner's position might have been perceived as an attempt to curry influence. (T. 550, 1107). However, when Judge Turner advised others that he was a "non-practicing attorney," this was misleading and intended to skirt the prohibition on judges practicing law.

E. <u>Intruding into the personal and family life of Heather Shelby.</u>

Heather Shelby is employed by the Osceola County Clerk of Court, and in the course of her job dealt with domestic violence injunctions. (T. 205). Judge Turner took the bench in January 2009, while Ms. Shelby was out on medical leave. (T. 205). Ms. Shelby began working with Judge Turner on February 18, 2009, when Judge Turner handled the domestic violence docket. (T. 209).

Ms. Shelby's desk was located in the clerk's office on the second floor of the Osceola County Courthouse. Judge Turner's courtroom and chambers were located on the Fourth and Sixth Floors, respectively. (T. 225).

Judge Turner had previously suffered prostate cancer. (T. 255; 1108). He gravitated towards Ms. Shelby's sunny disposition, particularly once he learned that her 12 year old son Christian was a cancer patient. (T. 210, 212-13; 215).

In approximately April or May 2009, Judge Turner summoned Ms. Shelby to chambers. (T. 212, 258). The Judge had just come from the gym, was in a t-shirt and gym shorts, and closed the door to his office. (T. 211-12; 687-88). He

asked how Shelby remained so upbeat, and began to discuss his personal problems, including the fact that his girlfriend had just broken-up with him, and the fact he was having problems with his daughter. (T. 212). He asked Shelby's advice, remarking that she had an "infectious smile" and he had a great feeling about her. (T. 212-13). After 20-25 minutes in chambers, Shelby told the judge she needed to get back to work. Judge Turner thanked her for coming up and talking to him, and kissed her on the cheek when she left. (T. 213;675). Shelby was shaken and uneasy about this meeting, which she felt crossed professional boundaries. (T. 214-15). She immediately told a co-worker what occurred, that it made her uneasy, and she didn't know how to handle it. Shelby and the co-worker agreed that it was maybe "just a one time thing" and she should wait to see what happened. (T. 214).

After a couple of days went by, Judge Turner began to phone Heather Shelby. In October, 2009, Shelby's son Christian came out of remission, was re-diagnosed with cancer and was admitted to three different hospitals. (T. 267). In October, Judge Turner was at Shelby's desk when she arrived at work, said he had heard about Christian's re-diagnosis, and wanted to take her to lunch. Shelby initially agreed, but was uncomfortable and tried to get out of it. When she called the judge's judicial assistant to cancel, the judicial assistant said she couldn't

because the judge had already directed his assistant to clear his afternoon docket so that he was free whenever Shelby was available. (T. 221-22).

Shelby would never have gone to lunch with Turner, but for the fact that he was a judge. (T. 221). When Shelby asked the judge the purpose of the lunch, he told her that he wanted to find out how things were going with Christian, inquired into their family finances, and how they were paying medical bills, and offered potential financial assistance. (T. 222-24). Judge Turner began calling Shelby constantly, including while he was on the bench. (T. 215). He started showing up at her desk six or seven times a day. (T. 225). Judge Turner constantly sought to visit Christian in the hospital or come by the house. "He was always asking questions." It would start in the morning; if he didn't see her first thing, Judge Turner would send Shelby e-mails. (T. 225). He invented reasons to see her (T. 243-45). She testified that "it was just an everyday thing; or he was down at my desk continuously all day long...I would turn around and he would be there ." (T. 267).

Judge Turner plied Shelby with personal questions, particularly about Christian. (T. 222-23). Judge Turner pressed her to allow him to visit Christian in the hospital. (T. 215-16). Christian did not want to see his closest friends, let alone a stranger. (T.217-18). Ms. Shelby considered this a "very, very private

thing" for her family and told the judge no "every single time." (T. 217). Judge Turner persisted, and told her to explain to Christian that he wanted to be his mentor – then it would be okay. (T. 217-18). When Christian again said "no," Shelby told the judge that Christian didn't want anyone around, and she wasn't going to force him to change his mind. (T. 217-18). When Christian got out of the hospital, Judge Turner talked about dropping by their home, sought to introduce Christian to his dog, and to take Christian to his medical treatment. (T. 218; 224-25).

In, January 2010, Judge Turner overheard Ms. Shelby tell his judicial assistant that she was taking Christian to see "Phantom of the Opera" for his birthday. (T. 267). Judge Turner indicated that Phantom was one of his favorite plays, that Christian would love it, and suggested that he come and take photos. (T. 235-36). The Judge was not invited to the performance and Shelby responded "No Judge, that won't be necessary." (T. 235, 237). In the week leading up to the performance, the Judge persisted. (T. 237). He talked about arriving to take pictures during intermission. (T. 237). When Shelby told the Judge that she didn't know the time of intermission, he responded that intermission was at 8:30. (T. 238).

Shelby reiterated that it wasn't necessary, but didn't "tell him off" because

she was trying to discourage him diplomatically. (T. 238).

Shelby phoned the Judge's cell right at intermission and asked "Are you here?" She explained she felt safer knowing where he was, then having him show up unexpectedly. (T. 239-40). The Judge was at the theater, shook Christian's hand, said he was glad to finally meet him, and snapped some photos. Christian returned to the theater. (T. 241).

The following week, Judge Turner told Shelby that the pictures had turned out beautiful, and he was so happy to have finally met Christian that "he just wanted to embrace him." (T. 241). Judge Turner added "Now that I've met him, I can't wait to spend more time with him." (T. 242). Shelby told the Judge that she was sure Christian was glad to meet him, but he hadn't changed his mind, and that "wasn't going to happen." (T. 242). Judge Turner continued to ask questions about Christian and express the desire for them to do things together. (T. 243).

Judge Turner's account of events coincided with Shelby's in many particulars. He invited Shelby into his chambers when he was in his gym shorts and closed the door. (T. 687-88). He considered it to be a friendly discussion. (T. 687-88). He invited Shelby to lunch at which he had personal conversations. (T. 688-89). He thought he moved one hearing, but not the entire docket to take Shelby to lunch. (T. 691).

Their main areas of disagreement were the number of times per day Judge Turner went down to see Shelby, the number times he asked to meet Christian, and whether he was invited to the Phantom performance to take photos of Christian. (T. 683-86). Judge Turner testified that he sought Shelby out only threes times a day, asked to meet Christian just once, and that Shelby wanted him to take photos of Christian. (T. 679-683).

Things came to head about February 2010, when Turner had already been down to see Shelby so many times at the clerk's office that she physically hid (T. 229-30; 267). Unable to find Shelby, Judge Turner searched every cubicle, loudly quizzing each person he saw with "Where's Heather?" Judge Turner's phone calls and visits became so frequent, that the clerk's office changed her phone number and moved her to another area. (T. 215-16; 225, 228).

It was apparent to Ms. Shelby (and the Hearing Panel) that Judge Turner was not interested in her either romantically or sexually. (T. 252). Instead, Judge Turner was lonely, "needed to be needed," and fixated on Ms. Shelby and her son. (T. 254; 255-56; 259; 270-71; 278). His attentions made Ms. Shelby uncomfortable, and became the source of gossip, as she literally hid to avoid the judge. (T. 228; 231). She tried to discourage the judge diplomatically, but he wouldn't take no for an answer. (T. 238; 242-43). Ms. Shelby characterized Judge

Turner as a person who doesn't respect boundaries and "doesn't get signals." (T. 238; 252). Judge Turner tried to force himself into her personal life on an ongoing basis. (T. 216; 270):

> Things that were being said was the continuous, "I want to - I want to go see Christian in the hospital." ... [E]very single time he saw me or would come downstairs "What's going on with Christian? Can we come and go do some things? Let me bring my dog over." The you know, "How would you have felt if I would have come by your house this weekend to see Christian?" Then ... wanting to take photos of him. And then, after he finally met him, then the "I want to embrace him, and I can't wait to spend a lot more time with him and take more photographs.

The panel found Heather Shelby to be a credible witness. Judge Turner disputed the frequency of his visits to Shelby's desk, which he pegged at "maybe three times a day," but not their occurrence. (T. 683). He agreed they were not strictly business-related. By Turner's own account, "he would go down [Heather's desk] and say, "how are things? How was last night." He knew Christian was on chemotherapy and inquired into Heather's welfare. (T. 683). When he went to Heather's desk and she was out, he questioned other clerks about Heather. (T. 684). Ms. Shelby's testimony was detailed, specific, and corroborated, in part by another court clerk, and by Judge Turner himself. Tanya Bradtmuller, a domestic court clerk floater, sat next to the judge in domestic

violence hearings and took court notes. (T. 306-07). Tonya relayed an instance where Judge Turner made a call from his cell phone during a hearing. This was followed by a call from Heather Shelby to Tanya, indicating "he's calling me on his cell phone." (T. 325). She observed that Judge Turner's efforts to track Heather down "got worse" over time. (T. 327).

Judge Turner testified that he thought he was helping, trying to comfort Heather, and "never knew" she had a problem with his visits, because he "never got any [adverse] signals..." (T. 685). He only understood his attentions were "unwanted" in retrospect. (T. 675).

Judge Turner voluntarily submitted to a psychological evaluation with Barbara Mara, PHD, at the recommendation of the Chief Judge. (T. 1138-40); Resp. Ex. 25). The psychologist reported "no major mental illness or gross pathology." However, due to a lack of insight regarding emotional issues, "he may display inappropriate behavior" (Resp. Ex. 25, p. 4). Objective testing revealed that Judge Turner has a naive and "somewhat self-centered opinion of himself and others", tends to overuse denial and repression, and his perceptions and interpretations "represent a lack of psychological insight and minimization trends." (Id. at p. 5).

Dr. Mara concluded:

> In my clinical opinion, Judge Turner's evaluation results suggest an individual who prefers to be in control, with a need to please others, and might push boundaries and rules to meet some of his needs. His lack of psychological insight, or simply put, sometimes he does not get it, might lead to poor judgment behavior whose intent is to receive attention, social approval and to fulfill the need to help others. His social behavior might be seen as audacious and uninhibited. All of these clinical characteristics relate to personality traits and not any major mental health concerns. (Resp. Ex. 25, p. 6).

Judge Turner was an expert employment attorney before he joined the bench. The panel finds that Ms. Shelby told him "no" repeatedly, but he ignored this because of his own need "to help" her and her son. While there was no sexual component to his attentions, they were nevertheless unwarranted and inappropriately intruded into Ms. Shelby's personal and family life. (T. 1152-53).

Judge Turner was oblivious to the fact that he held a superior position to Ms. Shelby, that she needed her job, would be extremely reluctant to anger him, and that his persistent attentions were unwanted and easily misconstrued by others. (T. 690; 1152-53).

F. Jewelry Seizure

On March 12, 2010, in State v. John Doe, Osceola County Case No. 2009 CJ 000327, in the cause of questioning a juvenile about his non-payment of costs, Judge Turner noticed that the juvenile was wearing a "nice diamond earring." The juvenile told Judge Turner that the earrings were fake and cost $7 dollars, in

response to a question. The juvenile agreed to give up his earrings when the judge offered to give him ten dollars credit towards costs. (JQC Ex. 63).

Judge Turner did not know this was prohibited. Chief Judge Perry called shortly thereafter and advised Judge Turner that he couldn't take such action. Judge Turner then immediately directed the juvenile clerk to prepare the necessary papers and return the earrings. (T. 866).

CONCLUSIONS OF LAW

Canon 1 of the Florida Code of Judicial Conduct provides:

A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2(A) of the Florida Code of Judicial Conduct provides:

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 5G of the Florida Code of Judicial Conduct provides:

A JUDGE SHALL REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES

* * *

Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation give legal advice to and draft or review documents for a member of the judge's family.

This provision allows a judge to give legal advice and draft legal documents

for a family member, but prohibits a judge from acting "as an advocate or negotiator for a member of the judge's family in a legal matter." Commentary to Canon 5G.

Canon 7 of the Florida Code of Judicial Conduct provides, in pertinent part:

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

A. All judges and candidates

* * *

(3) A candidate for a judicial office:

(a) shall be faithful to the law and maintain professional competence in it and shall not be swayed by partisan interests, public clamor, or fear of criticism;

(b) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity, and independence of the judiciary...

* * *

C. Judge and Candidates subject to Election.

(1) A candidate...for a judicial office that is filled by public election between competing candidates shall not personally solicit campaign funds, or solicit attorneys for publicly stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the candidate's campaign and to obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting campaign contributions or public support from any person or corporation authorized by law...

Florida's campaign finance law prohibits the making or acceptance of any campaign contribution from any person in excess of $500.00 to any candidate for

election...§ 106.08(1)(a), (7)(a), Fla.Stat. A "contribution" means "a gift ... loan payment, or distribution of money or anything of value ... made for the purpose of influencing the results of an election..." § 106.011(3)(a), Fla. Stat. (2009). The $500 limit does not apply to amounts contributed by a candidate to his own campaign. § 106.08(1)(b)(1), Fla. Stat. (2009). Any contribution received by a candidate in an election on the day of that election or less than five days prior to the day of that election must be returned and may not be used or expended by or on behalf of the candidate. § 106.08(3)(a), (b) Fla.Stat. (2009).

By his e-mail dated August 27, 2008, Judge Turner directly solicited campaign contributions from Florida Bar members in Orange and Osceola Counties. This conduct violated Judicial Canons 7A (3)(a), (3)(b) and 7C.

Judge Turner urges that Canon 7's ban on personal solicitation of campaign contribution is unconstitutional because it has a chilling effect on core political speech. (Trial memo pp. 11-12). This defense needs to be addressed.

In Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court recognized a compelling state interest in preventing corruption or the appearance of corruption in elections through some campaign finance regulation. Id. at 26-27. It found that restrictions on raising funds were typically less burdensome to speech than restrictions on spending funds. Id. at 20-21.

Federal Courts have split on the appropriate level of scrutiny and the constitutionality of canons prohibiting direct solicitation by judges or judicial candidates. See Bauer v. Shepard, 620 F. 3d 704, 709-712 (7th Cir. 2010); Siefert v. Alexander, 608 F. 3d 974, 988-90 (7th Cir. 2010); Stretton v. Disciplinary Board of the Supreme Court of Pennsylvania, 944 F. 2d 137, 145-47 (3rd Cir. 1991) (direct solicitation ban held constitutional); Cf. Carey v. Wolnitzek, 614 F. 3d 189 (6th Cir. 2010); Weaver v. Bonner, 309 F. 3d 1312, 1322 (11thCir. 2002) (solicitation ban held unconstitutional); see also Wersal v. Sexton, 613 F. 3d 821; 839-41, (8th Cir. 2010) (solicitation ban unconstitutional, but rehearing en banc **granted** October 15, 2010).

Proponents of the ban hold that it prevents undue coercion, the potential for **quid pro quo**, and the appearance of a **quid pro quo**. See Siefert v. Alexander, 608 F. 3d 974, 989 (7th Cir. 2010) ("the perceived coerciveness of direct solicitations is closely related to their potential impact on impartiality. A direct solicitation closely links the quid – avoiding the judge's future disfavor – to the quo – the contribution"). Here, however, Judge Turner solicited contributions by directly mass-mailing, which is more attenuated, but asked recipients to respond to him directly. See Carey v. Wolnitzek, 614 F. 3d 189, 205 (6th Cir. 2010) (finding that such indirect methods of solicitation present little or no risk of undue pressure

or the appearance of **quid quo pro**).

Florida has long recognized that maintaining the impartiality and independence of the judiciary from political influence constitutes a compelling governmental interest. In re Code of Judicial Conduct. (Canons 1, 2, 7A (1)(6)), 603 So. 2d 494, 497 (Fla. 1992). See generally Caperton v. A. T. Massey Coal Co., ____ U.S. ____, 129 S. Ct. 2252, 2266 (2009) (Judicial Codes of Conduct serve to maintain the integrity of the judiciary and the rule of law, which are the principal safeguards against judicial campaign abuse, and threaten public confidence in judicial fairness and integrity in elected judges, and "is a vital state interest.").

In 2008, several of Florida's judicial canons were amended, but 7C (1)'s prohibition on personal solicitation was not before the court. See In re Amendments to the Code of Judicial Conduct - Limitations on Judge's Participation in Fundraising Activities, 983 So. 2d 550 (Fla. 2008). In Inquiry Concerning Kinsey, 842 So.2d 77 (Fla. 2003), the Florida Supreme Court upheld Canon 7A(3)(d)(i)-(ii)(the pledge and promise and commitment provisions) on the basis that these serve "a compelling state interest in preserving the integrity of our judiciary and maintaining the public's confidence in an impartial judiciary." Any determination of the constitutionality of Canon 7C should likewise come from the

Florida Supreme Court.

Judge Turner also violated Judicial Canon 7C(1) and Florida's campaign finance laws by soliciting a contribution in excess of $500 from his mother. Judge Turner did not loan $30,000 from himself to his campaign; he solicited these funds from his mother. (T. 541).[2] Deposits were made to his campaign account after the election, after the drop-dead date required by statute, and were not returned as mandated by § 106.08(3)(a), Fla.Stat. The contribution made by Judge Turner's mother enabled him to pay off campaign debts already incurred, and was so used. (T. 536-37). A "loan" was reported to the Division of Elections, but was not otherwise documented in any way at any time on any financial disclosure forms, campaign treasurer reports or IRS forms.

Judge Turner further violated judicial canons 1, 2A & 5G by representing his mother in the foreclosure action brought against her, and negotiating with counsel for the lender. The Hearing Panel rejects the defense that he did so "in a panic." Judge Turner further violated Judicial Canons 1 & 2A for his intrusion into the personal life of Heather Shelby and her son. He did not violate § 760.10, Fla. Stat. (Florida's discrimination statute).

[2]Canons 1 & 2 do not apply to this charge because James N. Turner was a judicial candidate, not a judge, at the time of the violation. See In re Kinsey, 842 So.2d 77, 85 (Fla.

Judge Turner committed more of an error in judgment than a canon violation by seizing a minor's jewelry, and rectified his error immediately.

RECOMMENDATION OF REMOVAL

The Florida Constitution vests jurisdiction in the JQC to recommend discipline for judges regarding misconduct committed "before or during judicial service if a complaint is made no later than one year following judicial service. Discipline includes reprimand, fine, suspension with or without pay, or lawyer discipline. The commission may also recommend removal of any judge whose conduct, during term of office or other...demonstrates a present unfitness to hold office. Fla. Const. art. V, § 12 (a) (1). "Malafides, scienter or moral turpitude on the part of a judge "are not required" for conduct unbecoming a member of the judiciary which demonstrates present unfitness to hold office. Fla. Const. art V, § 12(c) (1).
The object of these proceedings "is not to inflict punishment but to determine whether one who exercised judicial power is unfit to hold a judgeship". In re Kelly, 238 So. 2d 565, 569 (Fla. 1970).

"Conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents, which indicate such conduct, or...by evidence of an accumulation of small and ostensibly innocuous incidents...considered together...." In re Kelly, 238 So. 2d 565 (Fla. 1970).

2003).

In the instant case, Judge Turner committed multiple canon violations. Acceptance of an illegal campaign contribution, in and of itself, was extremely serious. See In Re Rodriguez, 829 So. 2d 857 (Fla. 2002); In Re Pando, 903 So. 2d 902 (Fla. 2005); In Re Colodny, 2010 WL 4878864 (Fla. 2010); see generally In Re Renke, 933 So. 2d 482 (Fla. 2006).

In Rodriguez, the JQC determined that Judge Rodriguez knowingly accepted a campaign contribution of $200,000, made for the purpose of influencing the election. The loan was made to Judge Rodriguez by a boyfriend, but the Judge filed campaign reports with the division of elections, indicating that she personally loaned the funds to her campaign. In additional campaign reports, Judge Rodriguez represented that the loan was made by her brother, and failed to disclose that $80,000 had been used to partially repay her boyfriend. In her Form 6 public disclosure, Judge Rodriguez failed to disclose the $120,000 debt remaining. She also filed a letter with the Division of Elections, falsely stating that her previously submitted net worth statement failed to include a $120,000 loan from her brother (when the loan was made by her boyfriend).

Rodriguez was decided on a stipulation, and evidence offered in mitigation. In Re Rodriguez, 829 So. 2d at 861 n. 2. This included the judge's exemplary personal and professional record, her acknowledgment of impropriety and apologies (which she continued to express), and the dismissal of related criminal charges.

The JQC recommended a public reprimand, a four month suspension without pay, and a $40,000 fine. It also found that "Judge Rodriguez's actions were committed negligently, and not as a pervasive scheme to evade the election laws." Id.

In Pando, 903 So. 2d 902 (Fla. 2005), the judge stipulated that she knowingly or recklessly accepted a $25,000 personal loan from her mother for the purpose of influencing an election result in excess of the $500 contribution limit, and misrepresented the loan's source to avoid this limit. She also knowingly or recklessly certified the correctness of campaign loan reports. She failed to disclose the source of loans in excess of the $500 limit, and made statements tending to mislead the JQC in deposition about a purported loan received from a Bank.

The JQC recommended a public reprimand and a $25,000 fine, which the Florida Supreme Court approved.

In a special concurrence, Justice Lewis espoused the view that "if conduct is so egregious as to require enormous monetary fines, the judicial office itself has been soiled and damaged." Id. at 904.

Recently, in Colodny, 2010 WL 4878864, the Judge was charged with listing $125,000 in contributions to her campaign as loans made by her, when they were in fact loans made by her father. The parties stipulated that the Judge executed a $150,000 promissory note to her parents secured by a mortgage on her condo.

Judge Colodny's father disbursed $125,000 to her in four separate installments. Following disbursements, Judge Colodny deposited the same amounts into her campaign account. These were listed on her campaign treasurer's reports as loans from the candidate. Within one week of the election, Judge Colodny reported loans aggregating $125,000 to the Division of Elections.

Judge Colodny filed her annual Form 6 without disclosing the loans from her father, but amended the Form once she received a notice of investigation from the JQC. The JQC accepted the Judge's explanation that she acted on advice of counsel. This was supported by affidavits from the judge's father and her campaign treasurer, who relied on specific portions of the Division of Elections Candidates and Campaign Treasurer Handbook." Id. at * 3. The JQC recommended a public reprimand and $5000 fine because ***inter alia*** Judge Colodny's acts were negligent not intentional, she voluntarily produced documentation to the panel, she cooperated with the investigation, and she filed a correct Form 6 when she realized her filings were inadequate.

In the instant case Judge Turner's conduct is more serious than Colodny, and more akin to that of Rodriguez and Pando. It is impossible to square the judge's defense with his education and training, which includes a B. S. in accounting, an LLM in taxation, and prior practice as a tax lawyer. Turner was completely in charge and handled all aspects of his financial campaign, and had no advice of

counsel defense. He found himself in a hotly contested judicial race, deeply in debt, with no place to turn. He actively solicited a campaign contribution in excess of $500 from his mother in order to win. It does not matter whether the $30,000 in funds he accepted from his mother constituted a "loan" or a "gift." Both are included in the statutory definition of a campaign "contribution".

In mitigation, the Hearing Panel has considered the absence of Florida Bar discipline during Judge Turner's lengthy legal career, and his cooperation with the Hearing Panel in turning over records immediately upon request. However, as aggravating factors, the Hearing Panel considered the fact that Judge Turner disguised the source of funds flowing into his campaign to make it appear that he loaned himself funds, when the true source was his mother. These funds were either a loan or a gift. However, Judge Turner did not disclose any loans or liabilities due his mother on his public disclosure forms in 2009 or 2010. His 2010 form was filed after he received a JQC notice of investigation, and unlike Colodny, he still did not disclose any loan or liability due his mother. His public disclosure forms were not amended at any time prior to trial.

Judge Turner likewise did not list imputed interest for the "loan" on his tax return, did not file a gift tax return, and answered "None" to questions about gifts on his 2009 Form 6A regarding "gift disclosure." (T. 1196).

In Inquiry concerning Renke, 933 So. 2d 482 (Fla. 2006), a judicial candidate

made multiple material misrepresentations about his qualifications and experience in order to win an election. Prior to trial, the charges were amended to add violation of state campaign finance laws by the judge's accepting an illegal campaign contribution from his father and his father's law firm. The JQC found these payments to be thinly disguised as wages, when they were in fact illegal donations. It recommended a public reprimand, a $40,000 fine and the assessment of costs, pointing to the judge's success on the bench in mitigation.

The Florida Supreme Court disagreed and ordered removal, holding that "one who obtains a position by fraud and other serious misconduct...is by definition unfit to hold office." Id. at 595. This case is akin to Renke in that Judge Turner solicited and accepted an illegal campaign contribution, and has been found guilty of multiple additional violations.

During its inquiry, the Hearing Panel also learned that Judge Turner's public disclosure forms were inaccurate in the extreme, for which the judge had no explanation. (T. 1169-70; 1191-1192, 1197).

Judge Turner also chose to represent his mother when she faced foreclosure. This representation likewise contained an element of deception. Judge Turner carefully crafted his correspondence to disguise the fact that he was a circuit judge, who could not practice law. This did not happen "in a panic" but over a two month period of time.

So too, Judge Turner abused the power of his office by intruding into the personal and private life of Heather Shelby. Judge Turner was an expert in the field of employment law, but failed to recognize that his attentions to Ms. Shelby were unwanted and inappropriate.

Judge Turner's conduct taken as a whole "is fundamentally inconsistent with the responsibilities of judicial office." In Re McMillan, 797 So. 2d 560, 573 (Fla. 2001); In Re Graziano, 696 So. 2d 744, 753 (Fla. 1997). Judge Turner violated the judicial canons to gain judicial office, and violated them repeatedly while in office. The standard of "fitness to hold office" calls for an examination of misconduct retrospectively and prospectively. Inquiry re Sloop, 946 So. 2d 1046, 1055-56 (Fla. 2007). Given the fact that the judge violated judicial canons in areas where he has particular expertise, the Hearing Panel has no confidence in his future judgment. Id. at 1055 (inquiry presents a window into judicial temperament and judgment). The Hearing Panel's recommendation of removal would remain the same even if the Florida Supreme Court holds that Judicial Canon 7C (1) is unconstitutional.

Judge Turner called numerous attorneys as witnesses all of whom described him as an open-minded, conscientious judge on the bench. His counsel offered a spirited defense and made an impassioned plea citing the judge's advanced age, inability to start over this late in his career, and the fact that his mother is now in his care.

As in Renke, it is not enough to point to Judge Turner's successes on the bench if he only attained that position through illegal campaign misconduct. In Re Renke, 933 So. 2d at 495. Moreover, in determining appropriate discipline in cases of judicial wrongdoing, the Panel's obligation is "first and foremost to the public and to our state's justice system." In Re Sloop, 946 So. 2d at 1049. That obligation can only be met by Judge Turner's removal.

All of the Hearing Panel's findings are supported by clear and convincing evidence. The vote of the Hearing Panel on guilt as well as the recommended discipline has been determined by an affirmative vote of at least two thirds of the six hearing panel members, in compliance with Fla. Const. art V, § 12 (b); FJQC Rule 19.

Dated this ____ day of _____, 20__.

So ordered this ____ day of _____, 2011.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

By:_____

Chairman, Hearing Panel,
Florida Judicial Qualifications Commission
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